Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Consumer Protection in the Broadband Era	)	WC Docket No. 05-271

INITIAL COMMENTS OF THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

The National Association of Regulatory Utility Commissioners ("NARUC") respectfully submits this response to the Notice of Proposed Rulemaking ("*Notice*" or "*NPRM*") issued by the Federal Communications Commission ("Commission" or "FCC") in the above-captioned proceedings.[1] The FCC is asking the right questions and NARUC encouraged by the increasing FCC outreach seeking coordinated action. In this proceeding, the FCC should adopt a practical framework that leverages the relative resources of all jurisdictions without inhibiting State efforts to either (i) promote the deployment of advanced infrastructures and universal service through State-based programs or (ii) protect consumers, competition, and the public health and safety in their respective jurisdictions.

In support of these comments, NARUC states as follows:

I. NARUC'S INTEREST

[1] *In the Matter of Consumer Protection in the Broadband Era, WC Docket No. 05-271,* Notice of Proposed Rulemaking, (rel. Sept. 23, 2005) ("*Notice*") [70 Federal Register 60259 (October 17, 2005).]

NARUC is a quasi-governmental nonprofit organization founded in 1889. NARUC represents the government officials in the fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands, charged with the duty of regulating, *inter alia*, the telecommunications common carriers within their respective borders. NARUC has been recognized by Congress[2] and the Courts[3] as a proper party to represent the collective interest of the State regulatory commissions.

NARUC's member commissions regulate intrastate telecommunications services and particularly the local service supplied by incumbent local exchange carriers ("ILECs") and others. The commissions are obligated to ensure ILECs, and their competitors, provide local telephone service at just and reasonable rates.

All NARUC's members have a direct interest in unfettered competition in the intrastate telecommunications market as part of their responsibilities in implementing State law protecting consumers, public safety, and ubiquity of access to services, as well as federal statutory provisions specifying carrier obligations to interconnect and provide nondiscriminatory access to competitors.[4] Federal law also

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2 See 47 U.S.C. § 410(c) (1971) (Congress designated NARUC to nominate members of Federal-State Joint Board to consider issues of concern to both the Federal Communications Commission and State regulators with respect to universal service, separations, and related concerns; Cf. 47 U.S.C. § 254 (1996) (describing functions of the Joint Federal-State Board on Universal Service). Cf. *NARUC, et al. v. ICC,* 41 F.3d 721 (D.C. Cir 1994) (where the Court explains "[c]arriers, to get the cards, applied to…(NARUC), an interstate umbrella organization that, as envisioned by Congress, played a role in drafting the regulations that the ICC issued to create the "bingo card" system.).

3 See *United States v. Southern Motor Carrier Rate Conference, Inc.,* 467 F. Supp. 471 (N.D. Ga. 1979), aff'd 672 F.2d 469 (5th Cir. 1982), aff'd en banc on reh'g, 702 F.2d 532 (5th Cir. 1983), rev'd on other grounds, 471 U.S. 48 (1985).

4 *Communications Act of 1934, as amended by the Telecommunications Act of 1996*, 47 U.S.C. § 151 et seq., Pub.L. No. 101-104, 110 Stat. 56 (1996) (West Supp. 1998) ("1996 Act" or "Act")

urges the States (and requires the FCC) to promote advanced telecommunications services like those at issue here. See 47 U.S.C. § 151 note (Section 706) (1996).[5]

Because of these concerns, the association passed two separate resolutions at our November 2005 convention requiring NARUC to file comments on the issues raised in this proceeding based on its existing policy documents.

II. INTRODUCTION

The FCC seeks comment on the need for any non-economic regulatory requirements necessary to ensure that consumer protection needs are met by all providers of broadband Internet access services. The *Notice* explores whether regulations the FCC may adopt pursuant to the Commission's ancillary jurisdiction under Title I of the Communications Act ("Act") should apply to broadband Internet access service, regardless of the underlying technology providers use to offer the service. It specifically seeks comment on whether the imposition of certain consumer protection rules is desirable and necessary as a matter of public policy, or whether the FCC should rely on market forces. Among the areas of concern listed for comment by the FCC are rules to protect consumer privacy, prohibit unauthorized changes to service, mandate truth-in-billing, require network outage reporting, impose a notice or pre-approval before providers can discontinue service,

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5 A 2001 survey of State commissions indicates that State commissions generally regulate advanced services very little. When they do, regulatory requirements are aimed at fulfilling social goals such as promoting competition through fair interconnection agreements, handling service quality complaints, or requiring universal service fund contributions. There are also State programs to promote deployment of advanced infrastructure. See, Lee, Chang Hee, "*Regulation of Service Quality for Advanced Services - A Follow-Up Survey on Advanced Services*" National Regulatory Research Institute (May 2001) at http://www.nrri.ohio-state.edu/programs/telcom/ pdf/RegofQoS.pdf. See also, Lee, Chang Hee, "*State Regulatory Commission Treatment of Advanced Services: Results of a Survey*," National Regulatory Research Institute (March 2001).

and/or require rate averaging. The FCC also discusses the agencies potential role as a complaint resolution forum on any or all of these issues and seeks comment on whether there are other areas of consumer protection not listed above for which the Commission should impose regulations.

III. A FRAMEWORK FOR ANALYSIS

The FCC should adopt a framework that leverages the relative resources and competencies of both jurisdictions without inhibiting State efforts to either (i) promote deployment of advanced infrastructures and universal service through State programs or (ii) protect consumers, competition, and the public health and safety in their respective jurisdictions.

The FCC should be commended[6] for, in the *NPRM*, hitting upon some of the most important questions awaiting resolution. Indeed, Section 5.5 of NARUC's *July 2004 Current Policies Regarding Telecommunications* (as amended November 2004) agrees that if the FCC chooses to impose a Title I regime on DSL services, as it did in the companion order in this proceeding, among the questions the agency should address include loss of ". . . consumer protections applicable to telecommunications services under Title II," like those listed in the *Notice*.

Significantly, in ¶ 158, the Commission also acknowledges one possible framework for analysis of all the specific topic areas presented by (i) recognizing " . . .*that the States play an important role in ensuring that public safety and consumer protection goals are met*," (ii) indicating "*this Notice may give rise to additional*

[6] And NARUC has done so in these comments and in a separate special resolution adopted in November 2005 specifically expressing the associations ". . . *appreciation to Chairman Kevin Martin, to his colleagues Commissioners Kathleen Abernathy, Jonathan Adelstein and Michael Copps, and to the staff of the [FCC] involved in the drafting of the NPRM for recognizing and affirming the States' interests in ensuring that public safety and consumer protection goals are met with respect to broadband Internet access service and for seeking comment on NARUC proposals and other means to harmonize federal regulations with the States' efforts and expertise*."

areas in which cooperation between this Commission and the States can achieve the best results," and (iii) seeking comment on "*how best to harmonize federal regulations with the States' efforts and expertise*" as well as NARUC's proposed "*'functional' approach to questions of federal and State jurisdiction, particularly with respect to consumer protection issues.*"

Although the framework outlined in the NARUC's July 2005 "*Federalism and Telecom*" White Paper was *explicitly premised upon a comprehensive rewrite of the existing FCC enabling legislation*, key elements of the "functional approach" are transferable to FCC action under the existing regime. An examination of that paper, NARUC's *July 2004 Current Policies Regarding Telecommunications* (as amended November 2004), as well as NARUC's long time advocacy on slamming, truth-in-billing, operator service requirements, telemarketing, customer privacy/Caller ID issues, and related consumer protection issues, reveal those same key elements:

1. FCC has a statutory basis for specific rules; and
2. FCC sets minimum standards; and
3. States retain flexibility to address novel/variations of a particular abuse. States allowed to impose more protective measures as well as enhanced fines or penalties.

States commissions excel at delivering responsive consumer protection, assessing market power, setting just and reasonable rates for carriers with market power, and providing fact-based arbitration/adjudication. States are also the "laboratories of democracy" for encouraging availability of new services and meeting policy challenges at the grassroots level. State involvement leverages enforcement efforts and provide, in many instances, faster resolution for consumers. A recent internal NARUC survey found that just 20 State commissions handled over 230,000 consumer complaints in 2004. These complaints are generally resolved on a one-for-one basis and the majority take only a few weeks through informal processes. States are almost always better positioned to respond. Practically, State government is often the first stop for consumers seeking assistance with a telecommunications related problem and, unlike the FCC which must respond to consumers from fifty States, each State government is only responsible for responding within its jurisdiction.

An effective, pragmatic approach to federalism, such as the framework suggested above, should, in the IP world or otherwise, recognize and take advantage of those State strengths.

NARUC's July 2005 *Resolution Supporting FCC Slamming Rules* provides a perfect case study illustrating the practical benefits of leveraged/more effective enforcement and reduced consumer confusion inherent in this framework. That CC Docket No. 97-129 proceeding was premised on specific authority in 47 U.S.C. § 258 (1996). In its *First Order on Reconsideration* (FCC 00-135) in that docket, the FCC recognized States should have the ability, if they choose, to mediate slamming complaints received from consumers within that State. It also acknowledged individual States have unique processes, procedures and rules regarding slamming complaints. Pursuant to the revised rules, States are now able to "opt-in" to become the primary forums for administering the slamming liability rules and resolving consumer's slamming complaints.[7] Although Congress limited the FCC's flexibility somewhat, the agency did not take a "cookie cutter" approach to slamming regulations. Rather the FCC has provided needed flexibility to the States to address unique fraudulent activities by establishing the regulatory floor and allowing the States to establish more stringent rules or the regulatory ceiling—particularly in the area of enhanced penalties. Thirty-seven States opted-in to the FCC's approach. There is no question oversight of slamming issues has been enhanced through collaborative Federalism as evidenced by: (i) more extensive information sharing on market practices and trends, (ii) decreases in complaints, (iii) better coordinated enforcement efforts, and (iv) the creation of a "common front" in opposition to abusive practices affecting consumers of telecommunications services established via the FCC's actions.

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[7] See, *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508 (1998) (*Second Report and Order*), *stayed in part*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999) (*Stay Order*), *motion to dissolve stay granted*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000) (*Order Lifting Stay*); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, First Order on Reconsideration, 15 FCC Rcd 8158 (2000) (*First Reconsideration Order*); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000) (*Third Report and Order*); Errata, DA 00-2163 (rel. Sept. 25, 2000); Erratum, DA 00-292 (rel. Oct. 4, 2000); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Order, 16 FCC Rcd 4999 (2001); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5099 (2003) (*Third Reconsideration Order* and/or *Second FNPRM*). The rules adopted by the Commission to implement section 258 are codified in part 64. See 47 C.F.R. §§ 64.1100 *et seq.*

Any agency effort to impose blanket preemption on State telecommunications specific rules, assuming the Courts agree there is a statutory basis for such actions, *can only restrict consumer redress in the future*. While federal standards provide a useful baseline for regulations in areas involving established abuses, broad preemption would leave consumers with untenable choices when new abuses arise. Even in established areas, federal rules should recognize that novel issues and related abuses will arise and build in flexibility to allow States to act. NARUC does not object to the creation of federal standards on settled issues that are already understood, but we do object to an approach that makes those standards a "ceiling" limiting States' ability to get the job done. Indeed, States have frequently been first to provide consumer relief when novel issues emerged. The obvious examples include rules concerning consumer privacy issues (Caller ID regulations), telemarketing abuses (State do-not-call laws), early pay-per-call services, and slamming. When novel issues arise in the States (and they will), the law of unintended consequences should not be construed against the consumer.

The FCC and the State commissions have jointly taken significant steps toward deregulation of the local exchange carriers and, like the FCC, have promoted competition in telecommunications services. Through the Joint Conference on Advanced Services, we have joined to build on individual State and FCC initiatives to promote the deployment of advanced services. Through Joint Boards, Task forces and advisory bodies we have, *inter alia*, moved to streamline and assure elements of accountability for various aspects of the federal universal service programs and joined to work towards improving the deployment of emergency communications.[8] Historically we have worked cooperatively for years on accounting issues and more recently, as discussed earlier, on slamming enforcement. This rulemaking provides an opportunity for the FCC to expand such efforts.

IV. SPECIFIC ISSUES

The FCC's original goals of developing "an analytical approach that is, to the extent possible, consistent across multiple platforms" and to minimize regulation of broadband where there is competition are good ones. The impact on existing State initiatives to promote deployment of advanced services, as well as the consequences of a "federalized" DSL loop providing a combination of voice and the FCC's new "information services," deeply concern NARUC's State members. Indeed, key to any examination of the specific problems raised in the NPRM, and the associations interests in this proceeding, is the FCC's implied prediction in Paragraph 157 that consumers will ". . . substitute broadband services and applications for narrowband services that were covered by" Title II requirements.[9]

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[8] See, e.g., *FCC Announces Joint Federal/State VoIP Enhanced 911 Enforcement Task Force*, Press Release, 2005 Westlaw 1750445 (July 25, 2005).

[9] The question of the proper treatment of so-called "nomadic" VoIP services (and other functionally equivalent non-managed services that can be provided over the so-called "public internet," remains a major driver for NARUC member interests in this proceeding. The preemptive pronouncements in that order are currently pending before the Eighth Circuit Court of Appeals in *Minnesota Public Utilities Commission et al v. FCC*, Case Nos. 05-1069, 05-1122, 05-3114, & 05-3118. Indeed, in earlier comments in the companion docket, NARUC raised concerns about "the impact of the "information service" carrying an integrated POTS voice substitute on universal service policies; authority to oversee service quality; emergency communications and many other issues." See May 2, 2002 Initial Comments of the National Association of Regulatory Utility Commissioners filed *In the Matter of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities,* CC Docket No. 02-33, *Universal Service Obligations of Broadband Providers, Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced*

History, economics, and common sense suggest there are some problems market forces cannot be relied upon to correct as well as some social policies – both federal and State – that market forces either will not address, or will inject unacceptable delay in attainment of the policy objective.

In the first category are problems that result from practices that actually enhance a particular market participant's profits. The classic example is slamming. But for stiff penalties and enforcement, it is more profitable for even mainstream carriers to encourage (or at least take no action to curtail) such practices. Privacy concerning CPNI is another area where market forces provide strong profit incentives for abuse. Misleading billing is yet a third area where sometimes profit motive may not provide adequate incentives for responsible carrier practice. The FCC received over 19,000 comments from individual consumers in response to the NASUCA petition for a declaratory ruling on billing clarity in CG Docket No. 04-208.[10]

In the second category are public policy objectives that are implemented through, e.g., State and federal universal service programs, State and federal emergency communications initiatives, State and federal critical infrastructure

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Services; *1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, CC Dockets Nos. 95-20, 98-10. If the Commission continues to or expands its proposed preemption of States in the area of VoIP-based telephone service consumer protection regulation, it should consider establishing VoIP-based telephone service consumer protection requirements.

10 Indeed, even the FCC acknowledges in its March 18, 2005 order in that same docket, that the bulk of telecommunications consumer complaints received by the Commission involve carriers' bills and charges. See, *In the Matter of Truth-in-Billing and Billing Format*, CC Docket No. 98-170, *National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing*, CG Docket No. 04-208
"Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking," (rel. March 18, 2005). [70 Fed Reg. 29979 May 25, 2005].

programs, State and federal rules limiting abrupt disconnection of essential services without notice, etc. Here too, history teaches that unaided, the market will not vindicate all these objectives, or, as illustrated by the FCC's recent VoIP E911 order, may require an unacceptable delay to reach a minimally acceptable result.

Assuming the FCC finds *there is a market failure* or, *a clear market abuse driven by market forces,* there remains a series of questions, which the FCC must address in the context of the statute:

- What is the proper remedy?
- Does the statute allow the FCC to provide that remedy?
- If it does, does the statute permit the FCC to preempt analogous State oversight?
- If so, does it make any sense to restrict additional State resources capable of targeting the abuse?

In the NARUC "*Federalism and Telecom*" paper, on pages 8-9 (See attached paper at page 8), the association provides a more comprehensive overview of the types of consumer protection rules the FCC may also wish to consider as part of this inquiry. NARUC will briefly address each in turn.

CPNI: In the Notice, the FCC asks if it should adopt rules under its Title I authority that forbid broadband Internet access providers from disclosing, without their customers' approval, information about their customers that they learn through the provision of their broadband Internet access service? While NARUC has nowhere spoken specifically to this issue, such action is consistent with both its

NARUC's July 2005 "*Federalism and Telecom*" White Paper and NARUC's *July 2004 Current Policies Regarding Telecommunications (as amended November 2004).* In the 2004 *Current Policies* document, at 10.8, NARUC points out with respect to "new telecommunications services" that:

> ". . . American jurisprudence recognizes a fundamental right to privacy in personal communications, and the Courts and Congress have recognized the paramount interest citizens have in protecting their privacy. Protection of privacy rights should be incorporated in the design of new telecommunications services and in rules regulating such services. Based upon customers' expectations of privacy, States have a substantial interest in the care and treatment of customer-derived information."

The NARUC Federalism paper specifies, on page 8, the earlier referenced framework, suggesting the FCC set minimum rules and that States "[e]nforce CPNI rules and supplement privacy rules where appropriate." As the FCC acknowledges in ¶ 149 of the *Notice,* "[c]onsumers' privacy needs are no less important when consumers communicate over and use broadband Internet access than when they rely on telecommunications services." Indeed, the rationale for CPNI restrictions is that carriers are in a unique position to collect sensitive personal information in which customers have a privacy interest. Broadband providers stand in the same unique position.

SLAMMING: As discussed earlier, NARUC and the FCC have a successful history with slamming enforcement and penalties. The framework, albeit restricted somewhat by the statutory text, has worked well. Such consideration is warranted and even necessary because the Internet environment may, in fact, prove to be more hospitable to slamming than traditional telephony services. The underlying technology of the Internet is vulnerable to manipulation by invasive programming and hijacking techniques that might be used to slam VoIP customers in ways that have not been considered or are even possible with traditional telephony.[11]

TRUTH-IN-BILLING: The Commission adopted truth-in-billing rules to ensure that consumers receive accurate, meaningful information on their telecommunications bills that will allow consumers to better understand their bills, compare service offerings, and thereby promote a more efficient, competitive marketplace.[12] NARUC's concern about those rules is that they depart from the framework referenced earlier in that they fail to allow more protective State rules.[13] That concern is central to the currently pending appeal before the 11th Circuit Court of Appeals in *National Association of State Utility Consumer Advocates v. FCC*, Case Nos. 05-11682, 05-12601. The *NPRM* asks if the FCC should impose requirements on broadband Internet access service providers that are similar to its

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11 If for some reason the FCC chooses not to apply a federal framework at this time, it should clarify that States retain authority to address abuses involving "Title I" facilities. *Cf. Qwest Corp. v. Scott*, 380 F.3d 367 (8th Cir 2004).

12 See 47 C.F.R. §§ 64.2400-2401.

13 Indeed the order on appeal is a retreat from the FCC's 1999 truth-in-billing regulations *that expressly allow States to enact their own, more stringent billing regulations.* See *1999 TIB Order*, ¶ 26, where the Commission held:

> [S]tates will be free to continue to enact and enforce additional regulation consistent with the general guidelines . . .set forth . . .including rules that are more specific than the general guidelines we adopt today. *In addition to whatever powers they may have to enforce their rules under State law, States also have express authority under section 258 to enforce the Commission's verifications procedure rules . . . with respect to intrastate services*. We are aware of several States that have existing regulations that are consistent with the truth-in-billing guidelines we adopt here. . . *We support these efforts*. (emphasis added).

For decades before passage of the 1996 legislation, as well as during the nine years since, NARUC's member commissions have regulated the billing practices of local, interexchange and, in many cases, wireless carriers. These regulations have existed alongside federal regulatory, or deregulatory, policies and rules. The March 18 order preempting certain State protective measures with respect to the wireless industry, currently pending on review, provides an interesting case in point. During the entire time the now preempted State regulations were imposed, the wireless industry, and competition among wireless carriers, flourished.

current truth-in-billing requirements or are otherwise geared toward reducing slamming, cramming, or other types of telecommunications-related fraud. Again, while NARUC has no resolutions that specifically address wireline DSL service, imposition of such requirements is consistent with a July 2004 resolution.[14]

NETWORK OUTAGE REPORTING: There is little doubt that fiber backbones and the facilities that feed them constitute critical infrastructure. The FCC already requires certain communications providers to notify the Commission of outages involving critical infrastructure of thirty or more minutes that affect a substantial number of customers or involve major airports, major military installations, key government facilities, nuclear power plants, or 911 facilities. The *NPRM* seeks comment on whether the FCC should exercise its Title I authority to impose any similar requirements on broadband Internet access service providers. NARUC doesn't have a resolution specifically on point, but in the 2004 *Current Policies* document, at section 2.4, dealing with "Service quality reporting" points out it ". . . is a vital part of the monitoring performed by State and federal regulators in order to protect customers in situations where no competitive alternatives are

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14 According to NARUC's July 2004 *Resolution Concerning the Truth-In-Billing Petition filed at the Federal Communications Commission by the National Association of State Utility Consumer Advocates (NASUCA)*, NARUC (i) Opposes the imposition of monthly surcharges that are not mandated or specifically authorized by law or regulation to be passed on to the consumer; (ii) believes that a clear, full and meaningful disclosure of all applicable surcharges should be made at the time of execution of the service agreement between the company and the consumer as such disclosure is one of the keys to empowering the consumer to make an informed decision regarding its choice; (iii) believes that monthly invoices should separate charges that law or regulation require to be passed through to consumers from those charges that are not mandated but are specifically authorized to be passed through to consumers; (iv) agrees with the principles advanced in the NASUCA's March 30, 2004, petition and supports an FCC investigation into the billing practices of the carriers with regard to such surcharges; and (v) urges that any order resulting from these proceedings should not preempt States from establishing more stringent standards for consumer protection.

available. Later in Section 6.5, NARUC urges the FCC to ". . . build a cooperative relationship with State commissions to undertake an ongoing comprehensive review of plans, rules, orders and programs designed to assess the vulnerability of the telecommunications infrastructure. Certainly such information would be a useful adjunct to any such effort.

SECTION 214 DISCONTINUANCE: Section 214 limits a telecommunications carrier's ability to discontinue unilaterally its service to customers. The FCC's implementing rules generally require domestic carriers wishing to "discontinue, reduce, or impair" services must first request authority to do so from the FCC[15] and must notify affected customers and others of their plans. Through enforcement of this requirement, the FCC provides an essential protection to consumers who might otherwise unexpectedly find themselves without phone service. The NPRM seeks comment as to whether this requirement should be extended to broadband Internet access service providers. As competition has grown, so too, has the need for proper notification by a carrier prior to exiting the market. As carriers enter the marketplace, others will invariably be forced out and leave. With VoIP-based telephone service being marketed as a substitute for phone service over broadband facilities, more and more consumers will depend upon broadband in the same way that they have historically depended upon their traditional telephone services. One protection, which is vital to consumers maintaining continuous, uninterrupted voice communications service, is the Section 214 notice requirement. At some point, when a provider of VoIP-based telephone service (or the underlying

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[15] 47 U.S.C. § 63.71.

carrier) plans to discontinue service, it seems no less urgent for consumers of its service than it is for consumers of traditional telephony services to receive notice prior to such discontinuance as well as an opportunity to secure service with an alternative provider before losing service.

CONCLUSION

The FCC and the State commissions have jointly taken significant steps toward deregulation of the local exchange carriers and have promoted competition in telecommunications services. These efforts must be continued jointly. Telecommunications and broadband markets are linked. NARUC urges the FCC to carefully consider the framework and specific policy proposals raised in this and other NARUC State member fillings before taking any final action in this docket.

Respectfully Submitted,

James Bradford Ramsay
GENERAL COUNSEL

Grace Soderburg
ASSISTANT GENERAL COUNSEL

National Association of Regulatory Utility Commissioners
1101 Vermont Ave, NW Suite 200
Washington, D.C. 20005

January 17, 2006

Appendices

**Filed as separate PDF documents to retain internal pagination.*

Appendix A

Resolution on Responding to FCC NPRM on Broadband Customer Service

WHEREAS, The Federal Communications Commission issued its NPRM on Consumer Protection in the Broadband Era on September 23, 2005, and it was published in the Federal Register on October 17, 2005; *and*

WHEREAS, The NPRM specifically asks whether the following issues related to consumer protection provisions that arose under Title II authority need to be addressed with regard to broadband Information Service offerings under Title I:
Customer Proprietary Network Information (CPNI),
Slamming,
Truth-in Billing,
Network Outage Reporting,
Section 214 Discontinuance,
Section 254(g) Rate Averaging Requirements,
Federal and State Involvement, and
Consumer Options for Enforcement; *and*

WHEREAS, Comments are due January 17, 2006 and replies are due March 1, 2006; *now therefore be it*

RESOLVED, That the National Association of Regulatory Utility Commissioners (NARUC), convened in its November 2005 Annual Convention in Indian Wells, California, directs the NARUC General Counsel to develop an appropriate response to the FCC's Notice of Proposed Rulemaking (FCC 05-150) consistent with the policies and proposals articulated in NARUC's July 2005 resolution and white paper, entitled *Federalism and Telecom* and established NARUC policies; *and be it further*

RESOLVED, That NARUC's General Counsel should file comments with the FCC based on the considerations raised in this resolution and NARUC's established policies.

Sponsored by the Committee on Telecommunications
Recommended by the NARUC Board of Directors November 15, 2005
Adopted by the NARUC November16, 2005

Appendix B

Resolution Commending the FCC's Wireline Broadband NPRM

WHEREAS, In anticipation of efforts to amend existing national telecommunications law in response to the evolving telecommunications marketplace, the National Association of Regulatory Utility Commissioners (NARUC) established a Legislative Task Force to develop a legislative proposal for NARUC's consideration; *and*

WHEREAS, At its Summer 2005 meetings in Austin, Texas, the NARUC adopted a resolution and attached white paper entitled *Federalism and Telecom*, developed by the Legislative Task Force, supporting establishment of a new regulatory framework that recognizes the particular strengths and interests of the federal, State, and local levels of government; *and*

WHEREAS, In its Report and Order and Notice of Proposed Rulemaking, adopted August 5, 2005 (FCC 05-150), the Federal Communications Commission (FCC) sought comment on the need for any non-economic regulatory requirements necessary to ensure that consumer protection needs are met by all providers of broadband Internet access services, *and*

WHEREAS, In paragraph 158 of that Notice of Proposed Rulemaking, the FCC specifically noted "*that NARUC has recently advocated for a 'functional' approach to questions of federal and State jurisdiction, particularly with respect to consumer protection issues*" and sought comment on both NARUC's proposed "functional" approach and on "*how best to harmonize federal regulations with the States' efforts and expertise*"; *now therefore be it*

RESOLVED, That the National Association of Regulatory Utility Commissioners (NARUC), convened in its November 2005 Annual Convention in Indian Wells, California, expresses its appreciation to Chairman Kevin Martin, to his colleagues Commissioners Kathleen Abernathy, Jonathan Adelstein and Michael Copps, and to the staff of the Federal Communications Commission involved in the drafting of the NPRM for recognizing and affirming the States' interests in ensuring that public safety and consumer protection goals are met with respect to broadband Internet access service and for seeking comment on NARUC's proposals and other means to harmonize federal regulations with the States' efforts and expertise; *and be it further*

RESOLVED, That the NARUC General Counsel is directed to develop an appropriate response to the FCC's Notice of Proposed Rulemaking (FCC 05-150) consistent with the policies and proposals articulated in NARUC's July 2005 resolution and white paper, entitled *Federalism and Telecom* and established NARUC policies.

Sponsored by the Committee on Telecommunications
Recommended by the NARUC Board of Directors November 15, 2005
Adopted by the NARUC November16, 2005

Appendix C

Resolution Supporting FCC's Slamming Rules

WHEREAS, The Federal Communications Commission (FCC) has issued a notice seeking comments regarding possible revision or elimination of its slamming rules under the
Regulatory Flexibility Act, 5 U.S.C. § 610 (DA No. 05-1524); *and*

WHEREAS, In its First Order on Reconsideration, CC Docket No. 97-129, Order FCC 00-135, the FCC recognized that States should have the ability, if they choose, to mediate slamming complaints received from consumers within that State; *and*

WHEREAS, The FCC recognizes that individual States have unique processes, procedures and rules regarding slamming complaints; *and*

WHEREAS, The FCC noted that State commissions are better equipped than the industry to resolve slamming disputes and directed that those disputes be brought before State commissions who choose to mediate slamming complaints; *and*

WHEREAS, On November 28, 2000, the FCC's revised telephone slamming liability rules went into effect; *and*

WHEREAS, Pursuant to the revised rules, States are now able to "opt-in" to become the primary forums for administering the slamming liability rules and resolving consumer's slamming complaints; *and*

WHEREAS, NARUC and the FCC have a history of fruitful collaboration and active cooperation attacking the abuse of slamming of a consumer's local or long distance telephone service provider; *and*

WHEREAS, The Board of Directors of the National Association of Regulatory Utility Commissioners ("NARUC"), convened in its July 2000 Summer Meeting in Los Angeles, California, passed a resolution commending and supporting the FCC in its efforts to address slamming problems and that recognize States as the appropriate contact for consumer complaints, as evidenced in Order 00-135; *and*

WHEREAS, In November of 2000, the NARUC Staff Subcommittee on Consumer Affairs developed the *State Commission Best Practices: A Guide to Administering the New FCC Slamming Rules* with the hope that the guidelines would allow States to be better equipped to effectively mediate slamming complaints, make it easier for States, the FCC, and consumers to resolve consumer complaints, and aid in enforcement efforts to identify and take action against companies engaged in slamming; *and*

WHEREAS, In 1999, NARUC and the FCC formulated the State and National Action Plan (SNAP) to provide formal coordination between Federal and State regulatory agencies on consumer and enforcement issues, including monthly conference calls to exchange information regarding emerging consumer problems or issues and pending enforcement actions; *and*

WHEREAS, To date the following 37 States, the District of Columbia and Puerto Rico, have "opted-in" to administer their own slamming rules: Alabama, Arkansas, California, Colorado, Connecticut, Florida, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, new Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, and Wyoming; *and*

WHEREAS, The FCC wisely did not take a "cookie cutter" approach to slamming regulations but rather provides the needed flexibility to the States to address unique fraudulent activities by establishing the regulatory floor while allowing the States to establish more stringent rules or the regulatory ceiling-- which includes the ability to fine violators; *and*

WHEREAS, Oversight of slamming issues by State Commissions has been enhanced through collaborative Federalism as evidenced by: more extensive information sharing on market practices and trends, decreases in slamming complaints, less divergence in regulatory responses to market abuses, better coordinated enforcement efforts, and by a common front in opposition to abusive practices affecting consumers of telecommunications services; *now be it further*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC), convened in its July 2005 Summer Committee Meeting in Austin, Texas, find the FCC's slamming rules to be the best model of cooperative Federalism striking an effective balance between State and Federal rules; *and be it further*

RESOLVED, That NARUC encourages and supports the FCC's efforts to maintain an effective, strong and cooperative relationship with NARUC and its member States as it addresses slamming issues and other consumer issues, including development of rules and policies, enforcement actions against violators, and developing and distributing related consumer education materials; *and be it further*

RESOLVED, That NARUC directs its General Counsel to file with the FCC comments in DA No. 05-1524 to further the intent of this resolution.

Sponsored by the Committee on Consumer Affairs
Adopted by the NARUC Board of Directors July 27, 2005

Appendix D

Resolution on Emergency Service Accessibility for Voice Over Internet Protocol Services

WHEREAS, The availability of emergency communications service ("E-911") is a vital public service that has saved countless lives in emergency situations; *and*

WHEREAS, Consumers have come to expect that E911 service will be transparent regardless of the competitive carriers selected to provide local dial tone; *and*

WHEREAS, Ubiquitous E-911 service is an important element of homeland security at the local, State and national levels that improves the effectiveness of law enforcement agencies to prevent and respond to crime and terrorism; *and*

WHEREAS, Telecommunications competitive neutrality dictates that VoIP providers should provide the same level of E-911 services as all other local telecommunications providers; *and*

WHEREAS, According to the ITFacts.biz Web site, 10 percent of U.S. business lines are already using VoIP, generating $1.3 billion in 2004, while the VoIP industry projects growth in business and residential lines to generate revenues up to $20 billion by 2009; *and*

WHEREAS, On May 19, 2005, FCC Chairman Martin and Commissioners Abernathy, Adelstein and Copps took important steps to properly inform and protect VoIP customers by (i) requiring all VoIP providers to inform their customers of the emergency calling capabilities of their service by July 29, 2005, and (ii) protecting VoIP customers by establishing a deadline of no later than November 28, 2005 for being able to fully deliver E-911 calls along with the location of the caller to the appropriate public safety answering point; *and*

WHEREAS, Congress has recognized the national importance of E-911 service by introducing legislation that will protect the public and establish a seamless national E911 service; *now therefore be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC), convened in its July 2005 Summer Committee Meeting in Austin, Texas, agrees with the warning of FCC Chairman Martin that this issue is a "matter of life and death" and commends Chairman Martin and Commissioners Abernathy, Adelstein and Copps for taking the leadership on addressing E-911 service over VoIP service and placing a firm deadline on the industry implementing a solution; *and be it further*

RESOLVED, NARUC commends Representatives Bart Gordon, TN, John Shimkus, IL and Anna Eshoo, CA, for introducing legislation to require all VoIP providers to provide effective E-911 service; *and be it further*

RESOLVED, NARUC is committed to working with Congress, the FCC and the industry on a comprehensive approach to the issue in order to educate and protect consumers regarding E-911 availability and services.

Sponsored by the Committee on Consumer Affairs
Adopted by the NARUC Board of Directors July 27, 2005

Appendix E

Resolution Concerning the Truth-in-Billing Petition filed at the Federal Communications Commission by the National Association of State Utility Consumer Advocates (NARUC)

WHEREAS, Some State Commissions have seen a trend where some wireline and wireless telecommunications carriers impose separate monthly surcharges and fees that are not mandated or specifically authorized by the Federal and/or State governments to be passed through to consumers; *and*

WHEREAS, Some States have reported that consumers frequently complain about these monthly surcharges on their telecommunications bills and that the explanation provided by the carriers for the charges sometimes is inadequate; *and*

WHEREAS, These monthly surcharges, as described by carriers, may be misleading by implying that the fees are not only the product of government regulation but are sanctioned or required by either Federal or State governments; *and*

WHEREAS, Many consumers do not discover the full cost of their telephone service until they receive their monthly bills; *and*

WHEREAS, Some carriers' monthly surcharges may violate the FCC's Truth-In-Billing Order's requirement that carrier bills "contain full and non-misleading descriptions of the charges that appear therein"; *and*

WHEREAS, On July 30, 2003, the National Association of Regulatory Utility Commissioners (NARUC) Board of Directors adopted a resolution stating that NARUC has numerous concerns regarding the current practice of some wireless carriers imposing separate explicit charges for Federally mandated programs such as enhanced 9-1-1 service, local number portability, number pooling, and Universal Service programs funding; *and*

WHEREAS, On July 30, 2003, the NARUC Board of Directors adopted a resolution encouraging the FCC to conduct a proceeding to determine whether its existing Truth-

In-Billing rules should be revised to address wireless carriers' current billing practices; *and*

WHEREAS, On July 31, 2002, the NARUC Board of Directors adopted a resolution urging that a Consumer Bill of Rights be developed for consumers of all telecommunications services that should include the right of consumers to receive clear and complete information regarding rates, terms and conditions for services; *and*

WHEREAS, On March 30, 2004, NARUC filed a petition with the FCC detailing wireline and wireless carriers' practices with respect to such monthly surcharges and fees and asking the FCC to enter an order addressing this problem.

WHEREAS, On May 25, 2004, the FCC established a pleading cycle to consider NARUC's petition and docketed NARUC's petition as CG Docket No. 04-208; *now therefore be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC), convened in its 2004 Summer Meetings in Salt Lake City, Utah, opposes the imposition of monthly surcharges that are not mandated or specifically authorized by law or regulation to be passed on to the consumer; *and be it further*

RESOLVED, That NARUC believes that a clear, full and meaningful disclosure of all applicable surcharges should be made at the time of execution of the service agreement between the company and the consumer as such disclosure is one of the keys to empowering the consumer to make an informed decision regarding its choice; *and be it further*

RESOLVED, That NARUC believes that monthly invoices should separate charges that law or regulation require to be passed through to consumers from those charges that are not mandated but are specifically authorized to be passed through to consumers; *and be it further*

RESOLVED, That NARUC agrees with the principles advanced in the NARUC's March 30, 2004, petition and supports an FCC investigation into the billing practices of the carriers with regard to such surcharges; *and be it further*

RESOLVED, That NARUC urges that any order resulting from these proceedings should not preempt States from establishing more stringent standards for consumer protection; *and be it further*

RESOLVED, The NARUC General Counsel is directed to file comments in support of the NARUC petition and take any appropriate action to further the intent of this resolution.

Sponsored by the Committee on Consumer Affairs

Adopted by the NARUC Board of Directors, July 14, 2004